



**FAIRFAX COUNTY LEGISLATIVE PROGRAM
FOR THE
2004 VIRGINIA GENERAL ASSEMBLY**

Adopted on December 8, 2003

**FAIRFAX COUNTY LEGISLATIVE PROGRAM
2004 VIRGINIA GENERAL ASSEMBLY**

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AND SCHOOL BOARD**

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***JOINT POSITIONS
FAIRFAX COUNTY BOARD OF SUPERVISORS AND
SCHOOL BOARD***

Fairfax County Board of Supervisors and School Board
JOINT LEGISLATIVE POSITIONS
2004 General Assembly

1. JOINT EDUCATION FUNDING POSITIONS

The Fairfax County School Board and the Fairfax County Board of Supervisors jointly support the following positions on these critical issues:

- ***Exempting all State aid for public education from spending reductions taken to manage Virginia's continuing budget deficits;***
- ***The need for increased State funding of public education through the Standards of Quality (SOQ) and other programs; and***
- ***The need for enhanced revenue capacity for localities to address pressing public education costs and other local needs***

(Updates and reaffirms previous position.)

State Education Underfunding

Support a significant increase in State education funding so that the State fully funds its share of the actual costs of meeting the Standards of Quality (SOQ), based on prevailing practices among local school divisions. In addition, the State should provide increased long-term funding for school construction and renovation and for educational technology, as well as full funding for the cost of competing factor to address the high cost of living and personnel costs in the competitive Northern Virginia regional wage market.

Oppose reducing the already-low State funding for K-12 public education, especially in view of growing student enrollment and the implementation of two State and federal accountability programs, including the Standards of Learning (SOL) and the requirements of the No Child Left Behind Act (NCLBA).

Need for Increased SOQ and Other Funding

Support recommendations from the Joint Legislative Audit and Review Commission's (JLARC) *Review of Elementary and Secondary School Funding*, which documents that the State has significantly underestimated and thus under-funded by more than \$1 billion in the 2002-2004 biennium the costs of meeting the current Standards of Quality (SOQ).

Support the recognition and funding of additional costs which, although they arise from prevailing best practices among the local school divisions, are currently not included in the SOQ funding formulas and are thus not supported by State funding.

Support General Assembly approval and full funding during the 2004-2006 biennium of the Board of Education's recommendations for enhancing the SOQ staffing standards.

Oppose increasing SOQ funding by shifting funds from other education accounts, such as categorical and incentive programs or the Literary Fund.

Fairfax County Board of Supervisors and School Board
JOINT LEGISLATIVE POSITIONS
2004 General Assembly

1. JOINT EDUCATION FUNDING POSITIONS (Cont.)

Enhanced Revenue Capacity for Education and Other Local Needs

Support giving counties the same taxing authority as that available to cities. Most counties are now providing the same services as cities, with fewer options available for funding those services. Counties are, by default, increasingly reliant on property taxes that are proving to be inadequate and inequitable revenue sources.

Support actions and recommendations by the Commission on the Revision of Virginia's State Tax Code and the Streamlined Sales Tax Project Agreement and other policy-makers that produce extra funds or funding opportunities for localities, and refrain from actions that decrease local revenue or opportunities for raising revenue at the local level or that expand the dependency of localities on revenue-sharing mechanisms controlled by the State. So-called "revenue neutral solutions" do not address the fundamental problem of insufficient funds for public services.

Support legislation returning a portion of the State individual income tax to the localities as net new revenue for their unrestricted use. This money would be in addition to existing State aid to localities.

Fairfax County Board of Supervisors and School Board
JOINT LEGISLATIVE POSITIONS
2004 General Assembly

2. EDUCATION FUNDING -- STUDENTS WITH LIMITED ENGLISH PROFICIENCY

The Standards of Quality (SOQ) now require local school boards to identify students with limited English proficiency (LEP) and enroll such students in appropriate instructional programs. State funding to local school divisions for LEP students should be commensurate with the services and resources necessary to adequately educate such children; State funding should recognize that LEP students require more resources to educate, a burden which is now borne almost exclusively by localities due to inadequate State assistance. (Updates and reaffirms previous position.)

During the 2002-2003 school year, 112 of Virginia's 132 school divisions reported enrolling 49,840 LEP students – an increase of 14% in just one year. FCPS enrolled 20,974 of these students.

In addition to the SOQ requirements, there are also federal requirements governing the education of LEP students. For example, the No Child Left Behind Act (NCLBA) requires that local school divisions frequently assess the English language proficiency and the academic achievement of LEP students and that LEP students achieve grade-level proficiency in English, mathematics, and science by 2014.

There should be a State provision for LEP students for alternate assessments that are linguistically appropriate and in the form most likely to yield accurate and reliable information on these students' mastery of subjects other than English, as authorized by the federal NCLBA. Several states have already developed alternate LEP assessments and others are beginning the process in response to NCLBA requirements. Presently, Virginia's Standards of Learning (SOL) tests were developed for native English-speaking students and are extremely challenging for students learning English. Studies consistently show that LEP students need at least five years of instruction in English before they are able to score at the fiftieth percentile on standardized tests of achievement.

REGIONAL POSITIONS

**Northern Virginia REGIONAL LEGISLATIVE POSITIONS
2004 Virginia General Assembly**

1. GANGS -- PREDICATE CRIMINAL ACTS AND BAIL STATUTES

Support legislation to expand the list of crimes that are considered predicate criminal acts when committed by any criminal street gang or one of its members "for the benefit of, at the direction of, or in association with any criminal street gang." The predicate criminal act constitutes a separate felony.

In addition, support legislation to create a rebuttable presumption against bail for alleged violations of criminal street gang statutes.

In August 2002, six members of MS-13, a criminal street gang, initiated a female juvenile into their gang. Recruiting a juvenile into a criminal street gang, or otherwise encouraging or causing him or her to join, is a felony.

Some gang-related crimes are considered predicate criminal acts (Va. Code § 18.2-46.1), which makes the criminal activity more serious and subjects the accused gang member to more severe punishment if found guilty. Recruitment or initiation into a criminal street gang is not listed as a predicate criminal act, and so the defendants were only convicted of violating the initiation statute. The maximum sentence for this charge is 5 years. If initiation into a gang had been included in the predicate criminal act statute and the prosecution could have proven the defendants were members of a criminal street gang with a pattern of criminal gang activity, the defendants would have faced additional charges and jail time.

Crimes to be added to the list of predicate acts under the proposal would be:

- recruiting juveniles for criminal street gangs;
- manufacturing, selling and distributing controlled substances and marijuana (Va. Code §§ 18.2-248 and 248.1);
- distributing certain controlled drugs to juveniles (Va. Code §18.2-255);
- selling drugs on or near certain properties, such as schools (Va. Code §18.2-255.2); and
- pointing, holding or brandishing a firearm (Va. Code §18.2-282).

* * * * *

The second proposal would amend Va. Code § 19.2-120 to preclude a presumption to bail for persons charged with violating the Criminal Street Gang Participation and Recruitment of Juveniles for Criminal Street Gang statutes. Currently, individuals charged with these crimes are not presumed a threat to public safety and are eligible for bail.

Northern Virginia REGIONAL LEGISLATIVE POSITIONS
2004 Virginia General Assembly

2. TAX RESTRUCTURING AND EDUCATION FUNDING

Fairfax County and other Northern Virginia localities, along with the Virginia Municipal League and the Virginia Association of Counties, support a package of recommendations that, if implemented together, will enhance K-12 education and promote State and local fiscal solvency. (Updates and reaffirms previous position.)

Localities such as Fairfax County and other Northern Virginia localities have more than met their responsibilities for K-12 education funding through their large contributions to the State General Fund, strong local effort, and historical toleration of high local composite indices which targets State funding away from this area. On the other hand, the State has not been meeting its responsibility for K-12 education funding. Substantial new State revenues are necessary statewide to end the existing sizeable shortfall in the State's contribution, and existing education programs should not be eliminated to fund this shortfall.

Localities are prepared to work with State leaders to consider a variety of policy options intended to restructure the current tax system and increase funding for public services such as K-12 education. Options include, but are not limited to, significant changes to the State income taxes (such as raising tax rates, eliminating certain existing exemptions, and reducing the tax burden on low-income tax filers), and expanding the sales tax base, including examining current sales tax exemption categories.

To address the substantial shortfall of State K-12 funding, the following as a package of recommendations should be adopted:

- Rebenchmark the Standards of Quality (SOQ) -- Fully fund the costs of rebenchmarking the SOQ, along with the categorical and incentive program accounts, for the 2004-2006 biennium in order that the localities may continue to implement the existing education program (\$525 million, estimated amount that the Governor has promised to include in the executive 2004-06 budget);
- State Board of Education Revision of SOQ -- Approve and fully fund, during the 2004-06 and 2006-08 biennia, the State Board of Education proposals adopted to revise the existing SOQ by acknowledging current, prevailing staffing practices (\$648 million -- many of these were Tier II recommendations in the JLARC study);
- 2002 JLARC Study on K-12 Funding -- Continue to implement the recommendations made in the JLARC study on funding K-12 education, especially recommendations 5, 6, 11, and 12 which relate to estimating SOQ costs in ways that produce a current, prevailing total cost, and also recommendations 16 and 17, which relate to adequate funding and expansion of the Virginia Pre-School Initiative (unfunded Tier I recommendations at \$535 million and over \$600 million for Tier III); and

Northern Virginia REGIONAL LEGISLATIVE POSITIONS
2004 Virginia General Assembly

2. TAX RESTRUCTURING AND EDUCATION FUNDING (Cont.)

- At-Risk Students -- Initiate a significant State initiative for addressing the needs of schools and students most at risk of failing the Standards of Learning (SOL) (annual cost of \$400-500 million, including the current \$120 million spent by the State now).

This at-risk funding should be distributed outside the Local Composite Index (LCI) using a program under which each school division would receive a set amount for each free lunch student, as well as an additional amount based on the school's concentration of such students. Localities then would match each State dollar at a ratio of \$4 state/\$1 local.

Localities specifically oppose any tax restructuring changes that would restrict existing local taxing authority, for example, a State-imposed cap on local real property tax rates. Further, any tax restructuring measures that would adversely affect the financial condition of counties, cities and towns would be opposed. Counties, in particular, are already much more limited in local taxing authority than cities and towns.

**Northern Virginia REGIONAL LEGISLATIVE POSITIONS
2004 Virginia General Assembly**

3. TRANSIT FUNDING

Support increasing the Northern Virginia motor fuels tax from two percent to four percent.

The Washington Metropolitan Area Transportation Authority (WMATA) has identified a \$1.5 billion funding shortfall in the next six years to address the Metro system's most urgent funding challenges caused by its aging infrastructure and record ridership. The \$1.5 billion is needed to protect, leverage and secure the more than \$9.4 billion public investment in the Metrorail and Metrobus systems.

Since 1981, the Northern Virginia Transportation Commission (NVTC) has collected a regional, two-percent motor fuels tax in Fairfax County, Arlington County and the Cities of Alexandria, Fairfax and Falls Church. This tax is applied to the retail price of motor fuels in the five jurisdictions. The revenue collected is allocated back to the jurisdictions based on point-of-sale. This revenue can only be used to pay the jurisdictions' share of the WMATA operating and capital expenses, including debt service. Loudoun County also receives a two-percent motor fuels sales tax and uses it for transportation purposes.

Last year, several jurisdictions and agencies included support for increasing Northern Virginia's regional motor fuels tax from two percent to four percent in their legislative program. Such an increase would generate approximately \$20 million in additional funds for transit and transportation projects and services annually.

The NVTC's Legislative Committee met on November 25 to prepare a recommendation for NVTC's consideration on December 4. The NVTC Legislative Committee recommended supporting legislation that increases the Northern Virginia regional motor fuels tax. NVTC is scheduled to adopt their legislative program on December 4. The Northern Virginia Transportation Authority (NVTa) is expected to adopt its legislative program on December 11. The draft NVTa legislative program includes a recommendation supporting an increase in the regional motor fuels tax. Several local jurisdictions are also including increasing the state motor fuels tax for transportation in their legislative programs.

Last year there was a regional transportation position supporting increasing funding for transit by increasing transit's share of the Transportation Trust Fund from 14.7 percent to 19 percent. This change would have generated an estimated \$30 million statewide for transit. Of this amount, approximately \$20 million would have been allocated to Northern Virginia. During last year's General Assembly this legislation was introduced, but it was referred to the HJR 211 study committee on transportation funding, and no action has been taken. The NVTC Legislative Committee has chosen not to recommend this position to the Commission this year. In addition, NVTa's draft legislative program does not include this position either.

Northern Virginia REGIONAL LEGISLATIVE POSITIONS
2004 Virginia General Assembly

4. TRANSPORTATION -- FUNDING

Support increasing the statewide motor fuels tax.

The Virginia Chamber of Commerce has endorsed increasing the statewide motor fuels tax for transportation. For example, catching up with inflation could increase the amount by up to ten cents a gallon, which would generate approximately \$440 to \$480 million statewide annually. In general, Northern Virginia usually receives about 25 percent of statewide transportation revenues.

In addition, the Northern Virginia Transportation Commission (NVTC) Legislative Committee met on November 25 to prepare a recommendation for NVTC's consideration on December 4.

The NVTC Legislative Committee is also recommending a ten cent increase in the statewide motor fuels tax. The Northern Virginia Transportation Authority (NVTA) is expected to adopt its legislative program on December 11. The draft NVTA legislative program includes a recommendation supporting an increase in the statewide motor fuels tax. Several local jurisdictions are also including support for increasing the state motor fuels tax for transportation in their legislative programs.

Northern Virginia REGIONAL LEGISLATIVE POSITIONS
2004 Virginia General Assembly

5. TRANSPORTATION -- PEDESTRIAN SAFETY

Northern Virginia localities and transportation agencies support statewide legislation that would require drivers to stop for pedestrians in a marked crosswalk at locations where the roadway speed is 35 miles per hour or less and the marked crosswalk is not at a signalized intersection. (Revises previous position.)

Last year several Northern Virginia jurisdictions and agencies sought legislation that would allow jurisdictions to pass ordinances requiring drivers to stop for pedestrians in a crosswalk at unsignalized intersections where the speed limit is 35 miles per hour or lower. In addition, there was also a statewide version of this bill.

Recent events throughout the region have highlighted a growing concern for the safety of pedestrians attempting to cross streets. Many Northern Virginia jurisdictions are exploring a variety of means to effectively provide for pedestrian safety while avoiding both the potential for serious vehicular accidents and the potential for creating a false sense of security for the pedestrians. Authorizing legislation to require drivers to stop for pedestrians in certain crosswalks statewide would serve to both increase pedestrian safety on a number of roads throughout the region and serve to heighten driver awareness of the issue.

Under current Virginia law a driver is only required to yield to pedestrians, rather than come to a complete stop for pedestrians, in a crosswalk at unsignalized intersections where the speed limit is 35 miles per hour or lower.

The Northern Virginia Transportation Commission (NVTC)'s Legislative Committee met on November 25 to prepare a recommendation for NVTC's consideration on December 4. The NVTC Legislative Committee is recommended supporting legislation that would allow local governments to require drivers to stop for pedestrians in marked crosswalks where the roadway speed is 35 miles per hour or less and the marked crosswalk is not at a signalized intersection. The Northern Virginia Transportation Authority (NVTA) is expected to adopt its legislative program on December 11. The draft NVTA legislative program includes a recommendation supporting a statewide version of the stop for pedestrians legislation. Several local jurisdictions are also including the statewide version of the stop for pedestrians legislation in their legislative programs.

**Northern Virginia REGIONAL LEGISLATIVE POSITIONS
2004 Virginia General Assembly**

6. TRANSPORTATION -- PHOTO RED LIGHT

Support extending the existing photo red light authority and changes to the program.

Fairfax County received approval to implement its Photo Red Program from the General Assembly in 1995. Several other jurisdictions, mostly in Northern Virginia, also received the authority to implement photo red programs. The authority for all of these programs will expire on July 1, 2005, unless the sunset is extended or removed. Last year Delegate Michelle McQuigg sponsored legislation that would remove the sunset provision, expand the authority to implement programs statewide, require a law enforcement officer to affirm violations, set forth criteria for intersection selection, specify engineering analyses and signage requirements, and require a public information campaign.

Fairfax County has seen a 59.9 percent reduction in the number of vehicles running red lights at intersections where a photo red camera was installed. Surveys conducted before and after the implementation of Fairfax County's Photo Red Light Program show that 81 percent of those surveyed support the program.

The Northern Virginia Transportation Authority (NVTA) is expected to adopt its legislative program on December 11. The draft NVTA legislative program includes a recommendation supporting legislation that would provide photo red authority to all jurisdictions statewide and extend the photo red light authority. Several local jurisdictions are also including similar recommendations in their legislative programs.

COUNTY INITIATIVES

Fairfax County LEGISLATIVE INITIATIVES
2004 Virginia General Assembly

1. HUMAN RIGHTS ORDINANCE -- SEXUAL ORIENTATION

Initiate legislation to permit the County, as an urban county executive form of government, to prohibit discrimination in the areas of housing, real estate transactions, employment, public accommodations, credit, and education on the basis of sexual orientation. Fairfax County already has taken actions pursuant to existing State enabling legislation in the preceding areas on the basis of race, color, religion, sex, pregnancy, child birth, and disability. (Updates and reaffirms previous initiative).

Presently, the Fairfax County Human Rights Ordinance does not prohibit discrimination against persons on the basis of sexual orientation. The Human Rights Commission in 2000 studied the need to add sexual orientation protections and issued a report to the Board of Supervisors documenting the need for the added protection and recommending that the Ordinance be amended to include sexual orientation as a protected class.

In response to the Commission's report, legislation was introduced in the 2001 and 2002 General Assembly Sessions at the request of Fairfax County which would have enabled the County to amend its existing Human Rights Ordinance to prohibit discrimination based on sexual orientation in the areas of housing, real estate transactions, employment, public accommodations, credit, and education. Senate Bill No. 1147 failed in the Senate Local Government Committee when it was passed by indefinitely in 2001; House Bill No. 750 was passed by indefinitely in the House Committee on Counties, Cities and Towns in 2002; and House Bill No. 2420 was passed by indefinitely in House Counties, Cities and Towns in 2003.

Fairfax County LEGISLATIVE INITIATIVES
2004 Virginia General Assembly

2. LAND CONSERVATION -- OPEN SPACE EASEMENTS

Initiate legislation to amend Va. Code § 10.1-1010(c) to reduce the minimum length of time from 5 years to 3 years that an entity, in order to hold a perpetual conservation easement, would be required to have a principal office in the Commonwealth.

The Virginia Conservation Easement Act (Va. Code §§10.1-1009 through 1016) provides a process whereby property owners may dedicate an open space conservation easement on some or all of their property to either a public body or a non-profit charitable 501(c)(3) corporation and, where such an easement is perpetual, be entitled to have the fact that the easement exists reflected in the fair market value of the entire parcel.

Currently Va. Code § 10.1-1010(c) requires that the holder or grantee of any perpetual conservation easement have had a principal office in the Commonwealth for at least five years. Recently, the Board of Supervisors initiated action to acquire a conservation easement in conjunction with the development of a particular piece of property in the McLean area. Although the McLean Land Conservancy, Inc. (MLC) had negotiated the establishment of this conservation easement and has expressed interest in ultimately maintaining it, the MLC cannot yet hold the easement because it has only been incorporated since January 2000.

Fairfax County LEGISLATIVE INITIATIVES
2004 Virginia General Assembly

3. PUBLIC SAFETY – USE OF MOTOR VEHICLE ENGINE BOOSTERS

Initiate legislation to provide additional enforcement mechanisms to combat the use of nitrous oxide to boost the engine power of motor vehicles.

Over the past couple of years, the Fairfax County Police Department has increasingly observed and cited motorists for illegally using nitrous oxide to boost the engine power of motor vehicles for short periods of time. These nitrous oxide boosters are used almost exclusively for racing on the highways. Currently, drivers who use nitrous oxide “boosters” to increase their vehicle’s speed can be cited only under Va. Code § 46.2-1002, which prohibits the use of unapproved equipment. However, violation of that code section is a traffic infraction, and the fines imposed for unlawful equipment violations typically range from \$25 to \$50, which are not large enough to deter potential violators. The General Assembly should adopt legislation that penalizes the use of such booster either by greater fines or by adverse action by the Department of Motor Vehicles.

Fairfax County LEGISLATIVE INITIATIVES
2004 Virginia General Assembly

4. PURCHASING -- USE OF FEDERAL GOVERNMENT CONTRACTS

Initiate legislation to amend Va. Code § 2.2-4304 to allow Virginia jurisdictions the flexibility of using GSA or other federal government contracts if such contracts permit use by local governments and other public bodies.

On December 17, 2002 the President signed into law the "E-Government Act of 2002" which permits state and local governments to use the GSA schedules for automated data processing equipment, software, supplies, support equipment, and services (as contained in Federal supply classification code group 70). Although this new law is a step in the right direction and could be very beneficial to state and local governments, Va. Code currently does not specifically authorize the use of GSA or other Federal contracts. Due to this lack of authority, Fairfax County is unable to take advantage of the potential price and time savings available from GSA or other federal government contracts.

Fairfax County has, for many years, benefited from using other local and national cooperative procurement contracts by achieving substantial cost savings gained through volume pricing, reducing administrative costs, and providing a broad range of commonly used commercial products while reducing the procurement lead time for County agencies. By amending Va. Code §2.2-4304, Fairfax County would have an additional purchasing option of using GSA or other federal contracts and would be expected to gain similar benefits.

It should be noted that Va. Code § 2.2-1111(B)(4) authorizes the Virginia Department of General Services/Division of Purchases and Supply to establish conditions under which state agencies may use, as a basis to procurement goods and nonprofessional services, GSA contracts. Currently, the purchasing manual issued by the Division of Purchases and Supply does not permit the direct placement of orders by State agencies against GSA contracts.

Fairfax County LEGISLATIVE INITIATIVES
2004 Virginia General Assembly

5. SANITARY DISTRICTS -- FORMATION

Initiate legislation to amend Va. Code § 15.2-858 to permit the County, as an urban county executive form of government to: 1) advertise the resolution needed to create or amend a sanitary district using the same descriptive summary as is now used for the advertisement of ordinances that are being considered by the Board; and 2) use geographic map descriptions. These amendments should apply both prospectively and retroactively.

At present, Va. Code § 15.2-858 requires the Board to publish the complete text of these resolutions that are used to create or amend sanitary districts. Such districts are used to provide several County services, e.g. community centers and leaf collection services. General law in Va. Code § 15.2-1427 provides a simpler procedure which permits localities to publish descriptive summaries of a proposed ordinance. If the County could use the same procedure, advertising costs would be reduced. Also, if the County could use geographic map descriptions, those maps would provide more useful descriptions than the current practice of using metes and bounds. Finally, in order to remove possible questions concerning the past establishment of such districts, such amendments should be prospective and retroactive.

COUNTY POSITIONS

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

1. FUNDING -- PUBLIC SAFETY HB 599 PROGRAM

Support full funding of the HB 599 law enforcement program, to include continuation of annual increases in accordance with the State General Fund as required by Va. Code §§ 9-183.13 through 9-183.21. The State should fully fund its commitment to this public safety program so that the funding is stable and equitable and can be relied upon to help fund preparedness and other important local law enforcement needs. Historically, State HB 599 funding has been plagued by inconsistency and repetitive reductions reflecting State budget shortfalls. (Revises and updates previous position.)

As a result of HB 599 funding, Fairfax County and other local governments with police departments have been able to fund previously unmet law enforcement needs. Such funding has supported civil disturbance preparedness, both in terms of equipment and training, has begun to address the growing concerns related to weapons of mass destruction, and has assisted in responding to recently-identified needs to enhance and expand intelligence gathering and processing capabilities.

The HB 599 program represents the State's effort to support law enforcement efforts in localities with police departments; the funding helps to provide greater equity with State assistance for local governments with sheriff's departments. However, there continues to be local concern over the stability and inconsistency of the HB 599 funding; while fully funded in the late 1990's after years of flat funding, recent State actions to balance shortfalls have continued to impact full funding, as depicted by the following historical perspective:

- At the behest of various affected cities, counties and towns, the Governor and 1999 General Assembly fully funded the HB 599 law enforcement program for FY 2000 by adding \$98 million statewide. This cooperative action not only reinstated the funding to a level commensurate with the annual cumulative increases of the State General Fund, but also honored a long-standing promise by the General Assembly to localities with police departments.
- During the 2000 General Assembly Session, the General Assembly and the Governor fully funded the HB 599 program for FY 2001 and FY 2002 at the percentage increase of the General Fund; during the 2001 Session, because of the State budget impasse, no changes were made to the HB 599 program funding. However, the Governor's Executive Order No. 74 reduced HB 599 statewide funding by \$4.8 million in FY 2001 and \$5.8 million in FY 2002 to ensure a balanced budget.
- Due to the State's revenue shortfall projected during the 2002 General Assembly Session, the General Assembly and the Governor reduced HB 599 statewide funding by \$5.9 million in FY 2002, \$2.5 million in FY 2003 and \$12.1 million in FY 2004. The General Assembly actions froze the FY 2004 appropriation at the same level as FY 2003.
- Due to a \$6 billion shortfall in the in State General Fund revenue in FY 2003 and FY 2004, the 2003 General Assembly Session and the Governor reduced HB 599 funding by \$5.5 million statewide in FY 2003 and FY 2004. This action again freezes the HB 599 funding at the FY 2003 level, which already contained a \$12.5 million statewide cut.

Fairfax County LEGISLATIVE POSITIONS 2004 Virginia General Assembly

2. FUNDING -- HUMAN SERVICES

Support adequate State funding for essential human services programs that offer protection from abuse, neglect and exploitation and assist people to achieve and maintain independence and self-sufficiency. (Revises and updates previous positions.)

Many human services programs, such as child protective services, adult protective services, comprehensive services for children, and foster care, are mandated by Federal and State statutes. Other programs, such as in-home services to senior citizens, mental health, mental retardation and substance abuse services, and affordable health services, while not mandated, provide assistance for very vulnerable people and support for people who lack the resources to help themselves. Some human services, such as parenting classes and respite services for caregivers, intervene to protect individuals at risk of abuse and prevent actions that might result in a need for more costly services.

A 2002 Joint Legislative Audit and Review Commission (JLARC) report compared Virginia's State and local spending on public welfare, hospitals and health with all other states and ranked Virginia 42nd. A stagnant economy and an outdated State and local tax structure are the immediate reasons Virginia is not able to fully fund essential services. However, the combination of the fiscal crisis and Virginia's traditional underfunding increase the seriousness of the situation. In addition, other trends will continue to exacerbate the costs for local governments' human service budgets, including: an increasingly diverse population; a growing number of elderly people; a continuing high level of children in poverty; and an emerging national health care crisis. It is also true that the size of the population and the high cost of living in Northern Virginia require, but do not always receive, a regional adjustment to the revenues designated through statewide funding formulas.

Like most local jurisdictions, Fairfax County provides funds to "prop up" human services programs that are of value to County residents, but inadequately supported by State General or Non-General Funds. However, with further budget cuts anticipated at the State level, and additional demands on local revenues, the County again will be forced to make difficult decisions about the level of funding available for crucial human services programs for the remainder of FY 2004 and for FY 2005. Further budget reductions may reduce critical services and impact programs. Therefore, the human services system proposes to monitor/support legislation/budget amendments that maintain and/or enhance State support for essential human services.

Family Services

Aging and Long Term Care: During this decade the senior population is expected to grow by 75 percent. Requests for adult day care services, congregate meals and home-based assistance with daily living activities are increasing at a faster rate than the funding required to provide these services. In addition, outreach to underserved minority populations is essential to serve the most economically and socially needy seniors. Successful outreach will increase the demand for service and/or intervention. While efficiencies have been put in place further anticipated increased demands may render it impossible to meet identified needs. Local services may be capped at current service levels and seniors will be placed on waiting lists.

Child Care: To maintain stability for the subsidized child care program and Virginia's families, the State will need to access and use all possible federal child care funding as well as continue to use transferred Temporary Assistance for Needy Families (TANF) funds as a base of support for the subsidized child care program. In addition, policy and/or funding is needed for the following priorities: An optional income eligibility limit of 250% federal poverty level to address and reflect the high costs of living in Northern Virginia; new provider reimbursement rates to reflect the true market and ensure that low-income families have access to child care; an additional year of child care subsidies for working, low-income families "aging out" of welfare programs.

Fairfax County LEGISLATIVE POSITIONS

2004 Virginia General Assembly

2. FUNDING -- HUMAN SERVICES (Cont.)

TANF Funding Issues: Virginia has been spending more dollars from the Temporary Assistance for Needy Families (TANF) federal block grant than it receives on a yearly basis. This is possible because Virginia has supplemented its TANF expenditures with TANF reserve funds, which are almost depleted now. Virginia has used its unallocated, reserve TANF funds to replace the State's General Funds in programs such as Healthy Families and Community Action programs. The state is in the process of considering options for revising its TANF budget. To receive TANF block grant funds, states are required to first meet the mandatory requirements of the program which are TANF case assistance, employment services, and TANF administrative expenditures. To balance the state TANF budget, currently discretionary TANF funded activities may face reductions or elimination if General Funds are not allocated to maintain these services. There are several programs in Fairfax County that are entirely or partially financed with TANF discretionary funds. These include:

- **Community Action Programs:** Last year, one million dollars of State General Fund dollars were eliminated and replaced with the same amount of Federal TANF block grant funds. Due to the unreliability of TANF funds, General Fund dollars need to be restored for Community Action Programs. Because Fairfax County awards State CSBG funds through the Consolidated Community Funding Pool, further cuts in this area will result in a reduction of funds to local nonprofit agencies that provide services to low-income families.
- **Healthy Families:** This nationally recognized child abuse prevention program is funded primarily by the County General Fund, TANF discretionary funds administered by the State, and Title IVE Foster Care Prevention funds. During FY 2003, Virginia allocated more than \$300,000 in TANF discretionary funds to support the HFF program, however the future viability of this funding is very uncertain. The TANF funding provides for salaries and operating expenditures to serve approximately 160 families at high risk for child abuse and neglect. If TANF funding is lost and not replaced by State General Funds dollars, the program will be reduced by 25%. The equivalent of one of four existing regional teams would be eliminated, creating an even wider gap between the need and capacity to serve.
- **Programs for the Hard to Serve:** In the past, discretionary TANF funds have been earmarked to provide additional services to individuals and families who face special hardships on the road to self-sufficiency. Examples of these difficulties include adults having trouble entering or retaining employment due to lack of transportation, struggling with substance abuse and/or domestic violence issues, or with previously undiagnosed learning disabilities that interfere with their ability to stay employed, prisoners reentering society, homeless individuals and families, and those families who are totally dependent on monthly TANF subsidies as their only source of income. Many of these individuals and families have benefited from additional supportive services paid by discretionary TANF grant funds and provided by local social service and/or by community based organizations. Presuming Congress reauthorizes the welfare reform program and at a minimum maintains the current level of TANF revenues available to Virginia, these "hard to serve" individuals and families should be prioritized as among the most in need of TANF supported programs.

Juvenile Justice

In 2003, 51 percent of State funds were cut from the Community Crime Control Act for juvenile justice (\$886,384). As a result, funding for numerous Fairfax County juvenile justice programs has been reduced and the CHINS Diversion and First Offender Programs have been eliminated completely: many of the remaining juvenile justice programs are currently filled to capacity. In FY 2003 the Department of Juvenile Justice reduced its block grant funding reimbursement to the County by \$828,771; the reduction resulted in the Juvenile Detention Center's (JDC) scaling back staffing and closing down one of its 11 units. The JDC's capacity is 121 youth and now can adequately staff up to 100 beds. Further Virginia Juvenile Community Crime Control Act (VJCCA) fund reductions in operating expenses will substantially impact the programming for court ordered youth and could cause overcrowding, potentially affecting the safety of both youth and staff. Without restoration of funding, the County will not be able to continue operating the programs at the existing levels.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

2. FUNDING -- HUMAN SERVICES (Cont.)

Community Services Boards

Protection of Existing Services and Additional State Funding: In FY 2003 the State reduced the CSB's funding by \$1.26 million and once again the State reduced the CSB's funding in FY 2004 by \$1.08 million, but did provide an opportunity to earn additional Medicaid funds. It is imperative that the General Assembly supports the need for additional State funding and protection of existing services through reinvestment projects for critical unmet community-based services identified in the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) Comprehensive State Plan 2004-2010 for persons with disabilities.

In the DMHMRSAS Comprehensive State Plan 2004-2010 the CSB identified and documented unmet service needs for 2,065 persons, including: 679 adults with serious mental illness; 66 youth with serious emotional disturbance; 613 adults with substance abuse problems and 106 adolescents with substance abuse problems. Currently, 354 persons with mental retardation are on the MR Waiver waiting list; 175 of the 354 are in urgent need of services through the MR Waiver Program. Without additional MR Waiver slots, the County would only be able to accommodate these individuals through normal attrition. In addition, there are 247 persons with mental retardation who are not waiver eligible but in need of services.

Medicaid:

- **Protect the Existing Medicaid Benefit in Virginia:** Support existing Medicaid State Plans for Mental Health Clinic and Community Mental Health Rehabilitation Services. Without these and other services many consumers discharged from State facilities would have no access to needed mental health services. Consumers with disabilities also need access to quality primary and dental health care.
- **Eligibility:** Support a State budget amendment to increase Medicaid eligibility requirement for medically indigent adults who are aged, blind and disabled from 80 percent of poverty to 100 percent of poverty. By changing the income requirement to incomes equal to 100 percent of the Federal Poverty Guidelines, thousands of uninsured individuals who are aged, blind or disabled would become eligible for Medicaid.
- **Rate and Use of Waiver:** Support a State budget amendment to allow a 15 percent increase in rates paid for congregate living, in-home supports and day programs for persons with mental retardation, along with an additional 25 percent increase for a Northern Virginia differential. Since 1991, there has been only a nominal increase in Medicaid Mental Retardation Waiver Rates despite the fact that the Consumer Price Index has risen by approximately 35 percent. During this time the costs of providing Waiver services have continued to rise. This is particularly true for group home and in-home services provided to persons with mental retardation. In the past two years providers initiated the closing of group homes and day support programs due to lack of sufficient funding.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

2. FUNDING -- HUMAN SERVICES (Cont.)

Olmstead Decision

Support adequate State funding to facilitate the movement of individuals with disabilities from institutions into the community and to provide for community services to prevent unnecessary institutionalization. In the Olmstead decision of 1999, the U.S. Supreme Court held that persons with disabilities, who live in, are 'at risk' of living in, or are eligible for placement in facilities or institutions, have a right to live in the community if: 1) they and their treatment professionals have determined that they can live successfully in the community, 2) the individual chooses to live in the community, and 3) the service can be reasonably accommodated given available resources. A recent State report on developing a plan in Virginia in response to the Olmstead decision contains over 200 recommendations for administrative and legislative actions. In August, 2003, Governor Warner stated that he will work to establish a collaborative, multi-agency team to cost out recommendations in the Report; direct state agencies to implement administrative actions that do not require legislation or funding; direct agencies to prepare legislation and budget proposals for consideration; and establish an Olmstead oversight advisory committee.

The human services needs highlighted above reflect the broad spectrum of programs affecting the lives of County residents every day. During the past ten years the General Assembly has enacted bold human services initiatives meant to promote and support the well being of families and individuals within the Commonwealth. The State endorsed the expansion of community based services for persons with mental disabilities and authorized the development of a comprehensive system of services for at-risk children, and implemented the Federal effort to reform welfare.

The true costs of providing the necessary services to fully implement the programs as envisioned were woefully underestimated and underfunded. Further, the State has not adequately defined the service responsibilities between localities and the State, and has failed to maximize available revenues by not providing the baseline funding necessary to draw down additional Medicaid funds for children's health care, optional mental retardation services and child day care.

The consequences of underfunding human services are substantial. Eliminating or reducing services in these areas seriously impacts the lives of children, the elderly, the disabled and the poor. Without relief, these problems do not disappear, they merely transform their appearance and emerge as homelessness, more serious illnesses, school failures, unemployment, and incarceration. In the long term these issues are far more serious and far more costly to remedy.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

3. FUNDING -- WORKFORCE INVESTMENT

A) Local Distribution of Excess Federal Unemployment Compensation Funds

Support a State budget amendment to mandate that the Virginia Employment Commission (VEC) distribute a portion of current and future funds received under the Reed Act to local workforce boards to support employment services through the One Stop System.

Federal law authorizes the unemployment insurance system, a Federal-State partnership, and the U.S. Department of Labor collects monies in unemployment taxes from each state; these monies are placed into a fund. The Reed Act mandates that funds be redistributed to states once the fund total reaches a certain level. In 2002, the Federal Government redistributed excess unemployment compensation funds to states for the first time since 1954. Virginia received an allocation of \$214 million in 2002, with funds administered by the VEC.

B) State Workforce Services Funding to Regional Partnerships

Support renewed and continued State funding of workforce services activities through the State Regional Competitiveness Program, in collaboration with eligible regional partnerships. The NVWIB is already collaborating closely with the Northern Virginia Regional Partnership in the planning and delivery of workforce services throughout the Northern Virginia region.

In 2002, the Virginia General Assembly provided \$2 million for Workforce Services activities, available to eligible Regional Partnerships participating in the State Regional Competitiveness Program (VA Code 15.2-1306). The 2003-2004 Budget Bill directed the State Department of Housing and Community Development to distribute these funds on a competitive basis, using a variety of socio-economic criteria to determine funding awards. These funds were eliminated by the General Assembly as part of the State's budget crisis.

There are currently nineteen (19) Regional Partnerships participating in the State Regional Competitiveness Program. In addition, there are seventeen (17) Workforce Investment Boards throughout the Commonwealth. The new State Workforce Services funding expects Regional Partnerships and Workforce Investment Boards to collaborate extensively in the planning and delivery of workforce services at the local and regional levels.

The Northern Virginia Regional Partnership has been notified by the State that it is recertified to participate in the State Regional Competitiveness Program for 2002-2007.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

3. FUNDING -- WORKFORCE INVESTMENT (Cont.)

C) Utilization of the Medical Education Campus at Northern Virginia Community College

Support adequate State funding to fully utilize all aspects of the new NVCC Medical Education Campus at the earliest possible date.

Similar to national workforce trends, the health services industry in Northern Virginia is continuing to seek new health workers and train existing employees to respond to continued industry growth and customer requirements. The Medical Education Center is designed to meet both the student demand for health professions education and employer demand for a qualified 21st century workforce. The Medical Education Center is committed to providing health care services to the community and increasing access to health care. This will be the first specialized community college center in Virginia. It will feature a medical mall and a network of community-based clinics. It will also be a clinical practice site for nursing and allied health students. The Center is a collaboration among NVCC, GMU, VCU, and regional secondary school systems.

Currently 1,000 students are enrolled in the Health Tech Division courses on the Annandale campus of NVCC. The plan for the new center is to open with 2,300 students in health care courses, with a future growth within five years of 5,000 students. GMU will work with its students on-site while VCU will offer web-based programs.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

4. HUMAN RIGHTS -- GENETIC INFORMATION DISCRIMINATION

Support legislation that would allow the County and other localities to include provisions within local human rights ordinances prohibiting discrimination in employment on the basis of genetic testing or genetic characteristics, provided such provisions are not inconsistent with the current provisions of Va. Code § 40.1-28.7:1(A). (Updates and reaffirms previous position.)

As enacted, Senate Bill No. 102 and House Bill No. 1307 (Howell and Watts, 2002 GA) in Va. Code § 40.1-28.7:1(A), prohibit employers from (i) requiring a genetic test as a condition of employment and (ii) refusing to hire, failing to promote, discharging (or otherwise adversely affecting any term or condition of employment other than a long-term care, life or disability insurance policy), an employee or prospective employee solely on the basis of the results of a genetic characteristic or genetic test. Violators are subject to actual or punitive damages, including back pay with interest, or injunctive relief.

The public perception is that access to and the use of genetic information by employers is detrimental to employment opportunities; in 1995 a Harris Poll confirmed that 85 percent of the public is concerned or somewhat concerned about access to genetic information by employers. In 1997, 63 percent of the respondents to a National Center for Genome Resources survey indicated that they would not take a genetic test if employers could get access to the results. According to the Human Genome Project, genetics often play a role in cancer, heart disease, diabetes, as well as somewhere between 3,000 and 4,000 diseases. Public concern about employment discrimination may cause individuals to refuse to seek potentially life-saving testing or treatment, or to participate in genetic research or clinical trials.

The current laws do not seem to allow for an administrative complaint to be filed with a local government agency such as the Human Rights Commission. The Fairfax County Human Rights Commission believes that allowing such an amendment to the local human rights ordinance is a natural extension of the protections already allowed under State law.

Last year Senate Bill No. 836 was reported from the Senate Committee on General Laws and passed the Senate but was stricken at the request of the patron in the House Committee on General Laws.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

5. LAND USE -- TRANSFERABLE DEVELOPMENT RIGHTS

Support legislation that would authorize local governments, by ordinance, to establish a Transferable Development Rights (TDR) program with the caveat that disincentives for localities to enact TDR ordinances are not part of such legislation, such as a prohibition on the rezoning of property in the sending and receiving zones after the adoption of a transferable development rights program. (Reaffirms previous position.)

Under a traditional TDR program, specific sending and receiving zones would be identified within a given locality. A developer would purchase some or all of the permitted development rights from parcels located within a sending zone and would then build the attributable density/intensity on land located within a receiving zone. The development of such transferred density would be in addition to the development potential otherwise permitted on the receiving parcels. Since at least the 1990 Session of the General Assembly, there have been several unsuccessful bills introduced that, if passed, would have authorized local governments to adopt TDR ordinances. The Board of Supervisors has historically endorsed the concept of legislation that would grant additional flexibility to local governments to establish TDR programs.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

6. PUBLIC SAFETY-- DANGEROUS WEAPONS IN PUBLIC FACILITIES

Support legislation to allow the County to adopt an ordinance prohibiting the possession of dangerous weapons in or on any facility or property owned or leased by the County, with certain exceptions, including any person who has been issued a permit to carry a concealed handgun. Violation of such an ordinance would be punishable as a misdemeanor.

Va. Code § 15.2-915 generally prohibits localities from regulating the possession or carrying of firearms, and the Fairfax County Circuit Court has ruled that this statute does not permit Fairfax County to prohibit persons from bringing firearms into buildings that are owned or used by the County government. However, private property owners in Virginia generally are able to decide whether or not to permit dangerous weapons on their own property; private property owners can even prohibit the carrying of a concealed handgun even when the individual has a concealed handgun permit.

Localities operate numerous facilities and a wide range of programs that serve both the public at-large as well as large numbers of special groups, such as those who interact with the criminal justice and human services systems. The latter often serves vulnerable individuals who may be dependent on governmental decisions or policies for their most basic needs, such as shelter, food, mental and physical care, and personal safety issues. Many of these individuals are physically present in local public buildings during an extremely stressful time of their lives. Denial of requests, such as eligibility for specific programs or treatment options, can be devastating to people who have turned to government as their last resort. Administrative decisions which occur in local government facilities can be every bit as traumatic to an individual, for example, as are court decisions which occur in courthouse facilities where weapons currently are banned.

Virginia law already prohibits firearms and other dangerous weapons in other areas. For example, it generally is illegal to carry a firearm into a place of worship (Va. Code § 18.2-283), into a courthouse (Va. Code § 18.2-283.1), or onto the property of a public or private school (Va. Code § 18.2-308.1). The General Assembly should enact enabling legislation that would permit Fairfax County to adopt a similar prohibition on its administrative offices, board meeting rooms, mental health facilities, police stations, tax offices, recreation areas, welfare facilities and other properties. Such enabling legislation should provide exceptions for firearms carried by any law enforcement officer or game warden, any special police officer, any magistrate or judge, and any person who has been issued a permit to carry a concealed handgun pursuant to Va. Code § 18.2-308(D).

The Board of Supervisors has previously initiated legislation to allow Fairfax County to adopt an ordinance prohibiting the possession of dangerous weapons in or upon certain or any facility or property owned or leased by the County:

- In 1996 House Bill No. 116 and Senate Bill No. 100 were introduced by the County and were amended to include the City of Alexandria and Prince William and Arlington Counties. These bills would have allowed the County to prohibit the possession of dangerous weapons in County facilities.
- In 1997 the Board initiated legislation (House Bill No. 1946 and Senate Bill No. 763) which would have allowed the County to ban dangerous weapons in teen centers.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

6. PUBLIC SAFETY -- DANGEROUS WEAPONS IN PUBLIC FACILITIES (Cont.)

- In 1998 the County again initiated similar legislation to allow banning of dangerous weapons in teen centers (Senate Bill No. 130).
- In 2000 the Board initiated legislation similar to that in 1996 (House Bill No. 148 and Senate Bill No. 425) which would have allowed the County to ban dangerous weapons in county-owned or operated facilities.
- In 2001 the Board initiated legislation (Senate Bill No. 934) which would have allowed the County to ban dangerous weapons in county-owned or operated facilities. A substitute for Senate Bill No. 934 narrowed the scope of the original bill, but still would have allowed Fairfax County to prohibit dangerous weapons in recreation centers and police stations.
- In 2002 the Board again initiated legislation (Senate Bill 424) to allow the County to ban dangerous weapons in County-owned or operated facilities. In response to testimony at the County's public hearing on the proposed legislative package, the Board decided not to include bans on weapons carried by persons with valid concealed carry permits as part of the proposed legislation. Despite this concession, the bill was not reported by the Senate Courts of Justice Committee.

A similar bill (House Bill No. 1017) would have prohibited the possession of a handgun in any County-owned building. The bill was initially carried over by the House Committee on Militia, Police and Public Safety and then amended during the Committee's reconsideration of the legislation. In its final form the bill would have prohibited the possession of handguns only in the specific council or board chamber where the governing body regularly meets. The measure was passed by indefinitely with only three members voting in favor of the legislation.

- In 2003 the Board again initiated legislation (Senate Bill 964) to allow the County to ban dangerous weapons upon the property of any County-owned or operated facilities. The bill would have required that any such ordinance provide for appropriate exemptions for educational, instructional, theatrical, and historical events. Also, any such ordinance could not be applicable to public streets, roads, or highways that are within the County, but could have been made applicable to the access roads and parking areas for the facilities that were subject to the ordinance. The bill was defeated 7-8 in Senate Local Government. The patron later tried to revive the bill on the Senate Floor by attempting to add it as an amendment to House Bill 1516. The amendment was rejected by a vote of 11-25.

The above County bills and similar authorizing bills initiated by individual Fairfax County legislators to prohibit dangerous weapons in County buildings and/or teen centers (introduced during the 1996, 1998, 1999, 2000, 2001, and 2002 Sessions) were killed in committee. Only Senate Bill No. 763 (1997 GA) passed the General Assembly; however, the bill was vetoed by Governor Allen.

In 2002 the General Assembly broadened an existing statutory prohibition against local government control of firearms by passing Senate Bill No. 593; that legislation amended Va. Code § 15.2-915 to require that any local ordinance regulating firearms shall be based only on a specific statute that expressly refers to firearms. Enactment of legislation based on the County's 2002 proposal (Senate Bill No. 424) would have met that new statutory requirement.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

7. TAXATION -- EQUAL TAXING AUTHORITY

Support legislation to grant counties equal taxing authority with cities and towns without a State-mandated dedication of those revenues. This would enable counties to broaden and diversify their revenue base, and reduce dependency on the real estate tax. This would allow, for example, counties to levy additional cigarette taxes. (Reaffirms previous position.)

This has been a long-standing position of Fairfax County, as well as the Virginia Association of Counties (VACo), the Virginia Municipal League (VML) and other local governments throughout the Commonwealth. A 1993 report by the Joint Legislative Audit and Review Commission (JLARC) on State and local service responsibilities noted that the distinction between cities and counties appropriate during the early 1900's to identify urban and rural localities in Virginia was blurred by the 1971 changes to the *Virginia Constitution*; those changes no longer maintained separate constitutional sections for cities and counties. Further, as noted by the 2001 Morris Commission, the distinction in taxing authority is “. . . based solely on an historical legalism and [which] has no relevancy to modern service responsibilities. . . .”

The elimination of different treatment of cities and counties, specifically for taxing authority, has since been recommended in 2001 by both the Commission on Virginia's State and Local Tax Structure for the 21st Century (the “Morris” Commission) and the Governor's Commission on Government Finance Reform for the 21st Century (the “Gilmore” Commission). The proposal was considered last year by the Joint Subcommittee to Study and Revise Virginia's State Tax Code (the “McDonnell/Hanger” subcommittee) and is now under consideration by the Commission on the Revision of Virginia's State Tax Code and the Streamlined Sales Tax Project Agreement.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

8. TELECOMMUNICATIONS

The telecommunications industry continues to change rapidly as a result of the Telecommunications Act of 1996. Federal and state governments continue to be pressured by industry representatives to eliminate or restrict local governments' existing authority over the telecommunications industry. Additionally, telecommunications representatives have promoted tax simplification and rate reduction under the umbrella of "tax reform."

As a result of lobbying by telecommunications industry representatives at the State level, a legislative study was created to reform State and local telecommunications taxes and this is the second year of the HJR 651 study. The study committee recently announced a blue-print for legislative "reform" which was reported to the overall tax-restructuring SJR 347 subcommittee. Subsequently, draft legislation setting forth a framework has been adopted by the HJR 651 study committee; although taxation of video services (direct broadcast satellite and cable) was considered, the committee did not include video services in the final proposed draft bill. The key points of the adopted framework included in the draft legislation for the 2004 General Assembly are as follows:

1. The simplified telecommunications tax plan would impose a statewide telecommunications sales tax of 4.5% on communications services, and a 911 fee not to exceed \$0.75 on wireline and wireless; the proposed sales and use tax also would replace the current local consumer utility tax on landline and wireless phones. The expanded tax base would also apply the proposed new telecommunications sales tax rate to long distance which currently is not taxed. Telephone calling cards and paging services (also not currently taxed) would be taxed in accordance with the current retail sales and use tax;
2. Tax revenues collected would be remitted to a single statewide point of administration into a special fund maintained by an authority or other third party (not yet determined) to be remitted to individual local governments;
3. Localities would be kept whole using a standard based on (i) tax rates adopted no later than July 1, 2003, and (ii) revenues from such rates collected beginning July 1, 2003, and ending June 30, 2004, as determined by the Auditor of Public Accounts (APA);
4. The telecommunications sales and use tax imposed on communications services would be in lieu of the retail sales and use tax; however, the rate of such tax could not exceed the retail sales and use tax rate;
5. The method of distribution of revenues to local governments under this plan would be determined by the local governments and approved by the 2005 General Assembly; this distribution methodology is to account for differences in future telecommunications revenue growth within the various localities;
6. The parameters of this proposal would be included in legislation submitted to the 2004 General Assembly; that legislation would require the collection of FY 2004 local tax revenue and industry revenue data, which would then establish the telecommunication tax and E911 rates for 2005 General Assembly action. The effective date of the proposed tax changes would be July 1, 2005; and
7. Finally, if the APA determines that the rate limitations for the telecommunications sales tax and the 911 fee are insufficient to fully replace the aggregated FY 2004 state and local revenues, then no tax restructuring legislation will be introduced in the 2005 Session.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

8. TELECOMMUNICATIONS (Cont.)

In response to the proposed changes, Fairfax County supports the following principles and positions:

- A) Oppose any reduction or diminution of local telecommunications taxing or regulatory authority, i.e., the telephone consumer utility tax, E 911 tax, local license tax, and cable franchise fee.**
- B) Any changes contemplated as part of any taxing or regulatory “reform” package:**
- 1. should be revenue neutral to individual localities (i.e., should result in maintaining the current telecommunications tax revenue to individual localities);**
 - 2. should require localities and providers of telecommunications services to report uniform verifiable data that will permit accurate collection and distribution of the revenues from the proposed telecommunications sales tax;**
 - 3. should maintain the tax as a local tax; however, if local taxing authority is eliminated, it is especially critical that any proposal be considered within the context of an overall State and local tax reform package;**
 - 4. should anticipate “future growth” of telecommunications services and should broaden the base to balance any rate reduction of existing fees and taxes; this might include services not presently taxed;**
 - 5. should not impact local regulatory authority directly or indirectly and should recognize the cable franchise fee as the fee paid to a locality for the for-profit cable operator’s use of public land and rights-of-way; should not classify this franchise fee as a telecommunications tax;**
 - 6. should specify third party and not State administration of the tax revenue; further, the collection function must retain a verifiable audit requirement; and**
 - 7. should increase the proposed E 911 rates to: (a) provide adequate funding for local public safety answering point (PSAP) expenditures, including critical communications equipment to address homeland security needs, and (b) to stabilize the Wireless E 911 fund.**

Fairfax County also maintains the following related positions:

- C) Oppose any preemption or circumvention of local governments’ historical control over land use decisions and oppose any attempt to eliminate local governments’ rights to charge, on a non-discriminatory basis, fair and reasonable compensation for use of public property (Reaffirms previous position.)**
- D) Specifically support restricting the Virginia Department of Transportation’s (VDOT’s) ability to allow the construction of commercial mobile and land-based telecommunications facilities (e.g., monopoles, towers, and related structures) without prior approval of the affected locality’s land-use and/or zoning authority. (Reaffirms previous position.)**
- E) Oppose any reduction, preemption, or circumvention of VDOT or the County’s authority to manage and oversee highway rights-of-way or the County’s authority to manage its property. (Reaffirms previous position.)**

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

9. TRANSPORTATION -- HIGHWAY ALLOCATION FORMULA

Support legislation increasing Fairfax County's share of the Secondary Road allocation by using factors such as population and Vehicle Miles Traveled (VMT). Support legislation that increases Northern Virginia's share of the Primary Road allocation by also using population and VMT per lane mile.

The Systems allocation formula is used to distribute the highway construction portion of the Transportation Trust Fund (TTF) to the Primary, Urban and Secondary Highway Systems in Virginia. The Primary System allocation formula is based 70 percent on Vehicle Miles Traveled (VMT), 25 percent on lane miles of primary roads in the district, and 5 percent on a needs factor. The Primary Road fund is distributed by the VDOT construction district; the Urban allocation formula is based 100 percent on population; and the Secondary Road allocation formula is 80 percent population and 20 percent land area.

Fairfax County is eligible for Primary Road (as part of VDOT's Northern Virginia District) and Secondary Road allocations. Since the Primary Road fund is allocated to the construction district, the County's share varies from year to year. However, Secondary Road allocation is made directly to the County.

Fairfax County LEGISLATIVE POSITIONS
2004 Virginia General Assembly

10. YOUTH -- FAIRFAX PARTNERSHIP FOR YOUTH *(Reaffirms previous positions)*

A) Support legislation to require regular statewide application of a comprehensive youth risk behavior survey in sufficient numbers for local sub-unit analysis.

In order to effectively respond to the needs and problems of their youth, communities need timely and accurate information on the types and prevalence of a variety of behaviors that place youth at risk. Confidential surveys have proven to be a valid and reliable method for acquiring and tracking such information, including both positive and negative trends. The information from youth risk behavior surveys is essential in targeting the problems most in need of intervention, and in measuring the impact of programs and other factors on those problems over time.

B) Support continuation of State funding for the Fairfax Partnership for Youth Mentoring Program (Partnership)

There is a general consensus that among youth aged 10 to 18 in Fairfax County (over 100,000) there is a large, unmet need for positive mentor relationships matching youth with caring adults who can serve as positive role models. Currently, the Partnership recruits, trains and supports adult mentors. Over 30 organizations that use mentors are involved in the Partnership project. The Partnership received \$50,000 from the General Assembly during each of the 2000 and 2002 sessions. Continued State funding is necessary to support the Partnership initiative through its implementation phase.